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ELECTION COMMISSION, INDIA

NOTIFICATION

*New Delhi, the 16th December, 1957/Agrahayana 25, 1879 Saka*

S.R.O. 4087.—Whereas the election of Shri Dippala Suri Dora as a member of the House of the People from the Parvatipur constituency of that House was called in question by an election petition presented under Part VI of the Representation of the People Act, 1951 (43 of 1951), by Shri V. V. Giri, Barrister-at-Law, son of Late Shri V. V. Jogiah Pantulu Garu, resident of 4, Giri Road, Madras-17;

And whereas the Federation Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, HYDERABAD

ELECTION PETITION NO. 83 OF 1957

V. V. Giri.—*Petitioner.*

*Versus*

Dippala Suri Dora & Two Others.—*Respondents.*

Monday, the Eighteenth Day of November, Nineteen Hundred and Fifty-seven.

ORDER

This petition arises out of the election in the double-member Parliamentary constituency of Parvathipuram, Andhra Pradesh. The petitioner seeks for a declaration that the election of the 1st respondent is void and for declaring the petitioner as having been duly elected to the House of the People to the Parvathipuram constituency for the general or non-reserved

seat. In the last election there were four candidates who contested in the double-member constituency of Parvathipuram, one seat of which was reserved for the scheduled tribes and the other seat was general and non-reserved. Of the contesting candidates, the 1st and 2nd respondents as members of the scheduled tribes contested for the reserved seat and as a result of the polling the 2nd respondent was declared elected for the reserved seat and the 1st respondent for the general seat on the basis of the votes polled by them in the following manner:

Reserved seat—

2nd respondent	..	..	1,26,792 votes
1st respondent	..	..	1,24,604 votes

General seat—

Petitioner	..	..	1,24,039 votes
3rd respondent	..	..	1,18,968 votes

The 1st respondent who was nominated as a candidate for election to fill up the reserved seat was declared elected for the general seat and that declaration is alleged to be illegal and invalid. The nomination paper presented by the 1st respondent was for the reserved seat and he paid the concession deposit of Rs. 250 and he contested the reserved seat having been set up by the Socialist Party; the reserved seat being contested also by the 2nd respondent who was nominated on behalf of the Congress Party. The petitioner states that he was nominated to contest only for the general seat by the Congress Party and that similarly the mandate of the Socialist Party was for the 1st respondent to contest for the reserved seat and the 3rd respondent for the general seat; and that there was no intention for any of the candidates to contest for the seats except for which they were nominated. The petitioner further proceeds to refer to the symbols allotted to the respective parties and also alleges that the 1st and 2nd respondents never sought the suffrage of the electorate in respect of the general or non-reserved seat. The petitioner contends that the election of the 1st respondent has been materially affected by the non-compliance with the provisions of the Representation of the Peoples Act of 1951 and the rules framed thereunder, inasmuch as he was declared elected for the general seat not having filed a nomination for it under Section 32 of the Act and that Section 54 of the Act does not authorise grouping of the contestants for the general seat and of the scheduled tribes candidates who never filed nominations nor contested for the general seat, and, in any event, if that section is considered to authorise such grouping then it is *ultra vires*, void and illegal, and that the 1st respondent could not be brought by any stretch of language within the words "remaining candidates" used in Section 54 (4) of the Act and that the illustration of the sub-section is misleading and illegal and that the illustration has been wrongly applied to the case. The result of the election has been further materially affected by non-compliance with the provisions of Part III of the Constitution of India and in particular Articles 14 and 15 and that the petitioner has been treated illegally, unfairly and unconstitutionally subjected to hostile discrimination and that the Representation of the Peoples Act of 1951 and the rules, as also Section 54 (4) of the Act was not in accordance with the provisions of the Constitution in particular Articles 326, 327 and 330 of the Constitution and was beyond the legislative competence of the Parliament. The petitioner further states that the result of the election of the 1st respondent has been materially affected by the improper acceptance of his nomination as he has falsely declared himself to be a member of the scheduled tribes of the Konda Dora in his nomination paper, whereas he was not in fact a member of any scheduled tribe but was a Kshatriya and

that not being a member of any scheduled tribe having deposited only a sum of Rs. 250 he could not be deemed to have been duly nominated under Section 34 of the Act, and that, in any event, his election has been materially affected by false statement in violation of Section 33, clause 2, of the Act. The petitioner therefore claims a declaration that he himself has been duly elected having in fact received the majority of the valid votes for the general or non-reserved seat.

The 2nd respondent did not file any written statement, the 1st respondent filed a counter to the petition which was adopted by the 3rd respondent in the written statement filed by him. The 1st respondent maintained that the declaration of his having been duly elected for the general seat was legal and valid and that he was not nominated for election to fill the reserved seat only and that he did not present his nomination paper for the reserved seat only having presented the same under Form 2A which does not contain any provision for restricting the filing of nomination to any particular seat and that the nomination paper was filed for the constituency as a whole, the constituency being treated as one unit. He states he is a member of the Muka Dora tribe and therefore entitled to a concession of deposit of Rs. 250 and that he cannot be considered to have contested the reserved seat by reason of payment of such sum as deposit. He was not set up by the Socialist Party but was treated as an Independent candidate and that he was not opposed by the 2nd respondent alone but by others including the petitioner, he having contested for the whole of the Parvathipuram double-member constituency. He denies that the mandate of the Socialist Party was that he should contest only for the reserved seat. He was not set up by any party for a particular seat, and even otherwise, a party's mandate and its disciplinary proceedings have no bearing in construing the provisions of the Act and the rules framed thereunder. He denies the other allegations in the petition as to the allotment of the symbols and their significance and states that the 1st and 2nd respondents did not contest for the reserved seats and that the assumption that the electorate had drawn a distinction between the candidates as general seat candidates and reserved seat candidates is baseless and that it was incorrect that the 1st and 2nd respondents sought the suffrage of the electorate in respect of the reserved seats. He denies that his election has been materially affected by non-compliance of the provisions of the Act and the rules framed thereunder; and states that the declaration of the 1st respondent was in conformity with Section 54 read with Sections 4 and 5 of the Act and that the illustration of Section 54 (4) is in conformity with that section. It is neither void nor illegal. The 1st respondent further states that his election has not been materially affected by non-compliance with the provisions of the Constitution and Articles 14 and 15 and that the special protection for persons belonging to scheduled tribes and scheduled castes is contemplated in the Constitution itself and in particular Articles 15, 330, 334, 338 and 342, and that the Representation of the Peoples' Act is in conformity with Article 327 of the Constitution and denies there is any hostile discrimination against the petitioner, and that the principle of election is that whoever gets the majority of votes is to be declared elected and even though he is a candidate belonging to scheduled tribes having got the majority of votes he was entitled to be declared elected as against the petitioner. He denies that he is a Kshatriya but a person belonging to the scheduled tribes of Muka Dora or that his election has been materially affected by any improper acceptance of his nomination. He states that he was also declared in Election Petition No. 7 of 1955 by the Election Tribunal of Ellore that he belongs to the Muka Dora tribe, that the petitioner never raised any objection at the time of the nomination and is therefore estopped from questioning at this stage. The 1st respondent states that the petitioner is at present

Governor of Uttar Pradesh and therefore is disqualified for being chosen as a Member of the House of the People since he is holding an office of profit and that he cannot be a member of the House of the People under Article 102 and Article 158, clause (v), of the Constitution. He further contends that it is not open to the petitioner to raise the question of the virus of any provision of the Act before this Tribunal.

On these pleadings the following issues are framed:—

1. Whether the respondent Dippala Suri Dora did contest only for the reserved seat and did polling take place on that footing and whether he did, by his conduct, waive his rights, if any, to contest for a general seat?
2. Has the election of Dippala Suri Dora been materially affected by non-compliance of the provisions of the Representation of the People Act, 1951, and the rules framed thereunder as alleged in the petition?
3. Whether the procedure followed by the Returning Officer in declaring the 1st respondent elected in preference to the petitioner for the general seat is valid according to Section 54 of the Representation of the Peoples Act, 1951?
4. Is Section 54 (4) of the Representation of the Peoples Act, 1951, *ultra vires*, illegal and void as being opposed to the provision of the Constitution? Is the petitioner entitled to raise this plea and has the Election Tribunal no jurisdiction to entertain the same?
5. Whether the result of the election of the 1st respondent has been materially affected by non-compliance of the provisions of the Constitution of India, *viz.*, Part III of the Constitution and in particular Articles 14 and 15 of the Constitution?
6. Whether Dippala Suri Dora is a Kshatriya and not a member of the scheduled tribe as claimed by him and whether his nomination is therefore not valid?
7. Whether the petitioner is estopped from questioning the 1st respondent's nomination as a scheduled tribe candidate in view of the petitioner not having raised the objection at the time of the scrutiny of the nomination?
8. To what relief or reliefs, if any, is the petitioner entitled?

The 1st respondent's counsel has given up Issue 7.

Parvathipuram Parliamentary constituency is a double-member constituency, one of its seats being reserved for the scheduled tribes. There were four candidates of whom the 1st and 2nd respondents declared themselves as being members of the scheduled tribes and paid the concession deposit of Rs. 250. The petitioner and the 2nd respondent were set up as Congress Party's candidates, the 2nd respondent for the reserved seat and the petitioner for the other seat, the contesting candidates being the 1st respondent and the 3rd respondent. The petitioner relies upon Exhibit P. 1(a) dated 28th January, 1957, being the nomination paper filed by the 1st respondent, where it is seen that he is nominated for election from the "Parvathipuram (reserved) Parliamentary constituency." P. 1(b) and P. 1(c) are two other nomination papers proposing the 1st respondent which also clearly show that the 1st respondent is nominated as a candidate for election to the Parvathipuram reserved constituency. So there can be no answer to the petitioner's contention that the 1st respondent was nominated for the reserved seat of the

Parliamentary constituency allotted for a member of the scheduled tribes, and it is common ground that when the results were declared the 2nd respondent who was also a member of the scheduled tribes was declared elected for the reserved seat and the 1st respondent was declared elected to the remaining seat. The question is whether this declaration, namely, the 1st respondent having been declared to the remaining seat is valid and legal and whether in the circumstances of the case could the 1st respondent be declared to have been duly elected as a Member of Parliament. The first contention is that a person cannot be declared elected to a seat for which he was not nominated and which he did not contest, and the Representation of the Peoples' Act would not permit of such a course.

Before attempting to answer these contentions, it will be necessary to examine the scheme and scope of the provisions in the Constitution and other Acts of Parliament relating to elections to the House of the People and to the subject of reservation of seats for the scheduled tribes and scheduled castes. The composition of the House of the People is provided under Article 81 of the Constitution. The House of the People is to consist of not more than 500 members chosen by direct election from the territorial constituencies in each State besides 20 members representing Union territories. Under clause 2 of Article 81 the number of seats that shall be allotted to each State is dealt with and the allotment shall be in such manner that the ratio between that number and the population of the State is so far as practicable the same for all States. Under Article 82 any readjustment of this allotment depending upon the population has to be effected upon the completion of each census. The number of seats therefore allotted to each State would depend upon its population. The elections to the House of the People and the Legislative Assembly shall be on the basis of adult suffrage and under Article 325 there shall be one general electoral roll for every territorial constituency for election to either House of Parliament and every person irrespective of religion, race, caste, sect or any of them shall be eligible to be included in the electoral roll. Parliament has however been conferred power under Article 327 to legislate with reference to all matters relating to or in connection with the elections including the preparation of electoral rolls, the delimitation of constituencies and all other matters which are necessary for securing the due constitution of the Parliament and Legislature. Similar powers are also conferred on the State legislatures in respect of matters relating to the election so far as provision is not made by Parliament under Article 327 of the Constitution.

There are certain special provisions in the Constitution relating to particular classes of people by which reservation of seats for scheduled castes and scheduled tribes have been provided. As for the House of the People, Article 330 provides that seats shall be reserved for scheduled castes and scheduled tribes and the number of seats reserved in any State for scheduled castes or scheduled tribes shall bear, as near as may be, the same proportion to the total number of seats allotted to that State in the House of the People as the population of the scheduled castes or the scheduled tribes in the State or in the part of the State in respect of which seats are so reserved, bears to the total population of the State. The allotment therefore of seats and the fixing of the proportion of the number of seats to be reserved for scheduled castes or scheduled tribes is to be implemented by legislation by Parliament which legislation has to be in accordance with the principles laid down in the Constitution.

The two Acts of Parliament that deal with the allotment of seats and the fixing of the number of reserved seats as also other matters relating to elections are, the Representation of the Peoples' Act, 1951 (Act 43 of 1951) and

the Delimitation Commission Act of 1952 (Act 81 of 1952). Under Section 8 clause 2 of the Delimitation Act the seats allotted to each State shall be distributed on certain basis. The Commission shall fix the constituencies as single member constituencies or double member constituencies, and wherever practicable seats may be reserved for scheduled castes or scheduled tribes in single member constituencies, but in every double member constituency one seat should be reserved either for the scheduled castes or for the scheduled tribes and the other seat shall not be so reserved. The Act therefore contemplates only either single member or double member constituencies and there is no room for constituencies having more than two seats, whatever might have been the position prior to 1952. The result would be that a single member constituency may solely be allotted for a reserved seat but in every two member constituency one seat alone, and not more than one seat, shall be reserved for the scheduled castes or scheduled tribes, the other seat not being so reserved.

It is clear that the number of seats fixed for each State to the House of the People and the number of seats out of them reserved for the scheduled castes and scheduled tribes shall be fixed by the Delimitation Commission and once they are so fixed they shall not be exceeded or varied except as provided in the Constitution and the Act. It would not be permissible for any State or authority to allot more seats from the State to the House of the People and it would not be possible to have more than the number of the reserved seats fixed for that State for giving representation to the scheduled castes or scheduled tribes. In the double member constituency of Parvathipuram, only one of the seats is a reserved seat for the scheduled tribes, the other seat not being so reserved. So therefore any one standing for election for the reserved seat can return only one candidate and not more than one candidate to that seat.

Now coming to the Representation of the Peoples' Act, Section 4 deals with the qualification for membership of the House of the People, the initial qualification to fill up a seat in the House of the People being that a person should be an elector for any Parliamentary constituency and an additional qualification required if he is to be chosen to fill a seat reserved for the scheduled tribe would be that he is a member of any of the scheduled tribes whether of that State or any other State. Section 4 makes a distinction between a reserved seat and the other seat and the respective qualifications required to be chosen to fill up those seats. As to nomination of candidates for election under Section 32, any person may be nominated as a candidate for election to fill a seat if he is qualified to be chosen to fill that seat under the provisions of the Constitution and this Act. Section 33 (2) provides that in any constituency where any seat is reserved a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration by him specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe, a scheduled caste or as the case may be, a scheduled tribe of the State. A candidate may be nominated by more than one nomination paper for election in the same constituency under Section 33 clause 6. The deposits required to be made for being duly nominated for election vary if the candidate is a member of the scheduled caste or scheduled tribe since he has to deposit only a sum of Rs. 250 whereas the deposit required for an election from a Parliamentary constituency is Rs. 500. The nomination has to be scrutinized by the Returning Officer under Section 36 who has to examine whether the candidate is qualified or disqualified for being chosen to fill the seat and the scrutiny of nominations for reserved seat will involve an examination as to whether he is not only an elector of the Parliamentary constituency but also whether he is a member of the scheduled caste or scheduled tribe. The

scrutiny of the nomination with reference to a reserved seat and to the remaining or the other seat has to proceed on different basis. That a vacancy arising in a reserved seat could only be filled by election to that seat of a member of the scheduled caste or scheduled tribe is made clear by Section 149 (2) of the Act which says that for a casual vacancy occurring in a reserved seat for scheduled caste or for any scheduled tribe the notification for filling up the vacancy shall be specified that the person to fill that seat shall belong to the scheduled caste or the scheduled tribe as the case may be. So far the provisions of the Act referred to make a distinction between a reserved seat and the other seat or remaining seat, the person to be chosen to the reserved seat could only be a member of the scheduled castes or scheduled tribes and not any person whose name appears in the electoral roll of the Parliamentary constituency and that member of the scheduled castes or scheduled tribes is given the privilege of paying a concessional deposit of Rs. 250, the Returning Officer who has to scrutinize the nomination has to satisfy himself whether the candidate who files his nomination for the reserved seat is a member of the scheduled castes or the scheduled tribes and a casual vacancy arising in such a reserved seat could only be filled not by any elector but by a member belonging to the scheduled castes or scheduled tribes. This distinction of keeping the two seats in a double member constituency separate and distinct one being a reserved seat, is in consonance with the principle of reservation of seats for scheduled castes and scheduled tribes recognized in the Constitution. Though the election may be in the same constituency and the electorate may be common, the seats to be filled for such election are separate and distinct.

The rules framed under the Act and the forms prescribed for the different stages of elections may now be examined to appreciate whether this distinction which is recognized in the Constitution and the Act is further maintained. The nomination shall be in Form 2A prescribed in pursuance of rule 4. It contains a provisions for a declaration that in the case of a nomination filed by a member of the scheduled castes or scheduled tribes that he must declare himself a member of such caste or tribe. It is pointed out that there need not be separate form of nomination papers for a reserved seat or for the other seat and that a common form is used for both seats which might indicate that no distinction is sought to be made in the Act to the two seats in a constituency. But it has to be noted that the form provides for a declaration which will show that the nomination paper which contains a declaration is a nomination for the reserved seat. But in this case it may be pointed out Ex P.I (a), P.I (b) and P.I (c) dispel any doubts arising from this argument that the form of nomination paper as such does not provide for specifying that the nomination is for any particular seat reserved or for the other seat, inasmuch as the candidate has, by his nomination papers P.I (a), P.I (b) and P.I (c) clearly expressed that he is standing for the reserved seat. Any lacuna in the preparation of the form of the nomination paper cannot however be taken advantage of by the 1st respondent as he has expressed himself that he is nominated for election to the reserved seat. In view of the distinction that is made in the Act with regard to the reserved seat and the other seat, the form of nomination could have been more specific and in consonance with the scheme of the Act and provide for a further statement by any candidate who is a member of the scheduled caste or scheduled tribe that he is being nominated for the reserved seat as the 1st respondent has done. Apparently the authorities thought that a declaration in the form would be sufficient. The form 24 relating to the declaration of election in pursuance of Rule 68 however shows that the Returning Officer has to declare that one of the candidates had been elected to fill the seat reserved for the scheduled castes or scheduled tribes and the other candidate elected to the remaining seat. There is therefore no difficulty in holding that in so far as the reserved seat

is concerned, the scheme of the Act seems to be that the reserved seat is treated as a separate entity, the nomination, the scrutiny and the return for election to the reserved seat being on considerations different from those pertaining to the other or the remaining seat. It is urged that none of the other forms prescribed make any special mention about the reserved seat as such, but Form 3A which is the notice of nomination and Form 7A relating to the publication of the list of the contesting candidates however provide for specifying the particulars as to the caste or the tribe of the candidates belonging to the scheduled castes or tribes. That information might be considered to be sufficient indication to show the distinction between candidates standing for the reserved seat and the candidates standing for the other seat. It would have been better if the forms have specifically mentioned the names of the candidates standing for the reserved seat and the candidates who contested the other seat but the absence of such specification in some of the forms prescribed by rules framed under the Act could not take away the effect of the provisions of the Act where this distinction has been shown to have been recognized. The allotment of symbols does not carry the matter further either way as different symbols are to be allotted to each contesting candidate under rule 10, and there need be no separate symbols for the reserved seats because each contesting candidate can be distinguished by his individual symbol.

The special procedure to be observed at elections in constituencies where seats are reserved for scheduled castes or scheduled tribes is provided under Section 54 of the Act and where the seats to be filled include one or more reserved seats, if the number of contesting candidates qualified to be chosen to fill the reserved seats is equal to the number of seats, all those candidates shall be declared elected to fill the reserved seats and the procedure laid down in Section 53 shall be followed for filling the remaining seat or seats. Section 53 is a general provision which provides that a poll should be taken if the number of contesting candidates are more than the number of seats to be filled. But if the number of candidates are equal to the number of seats then all the candidates should be duly elected to fill those seats. And if the number of such candidates is less than the number of seats to be filled, the Returning Officer shall declare all such candidates to be elected and the election for the remaining seats shall be notified but the notification in filling the remaining seats has to be made regard being had as to whether the remaining seat is a reserved seat or not. Section 54 clauses (3) and (4) provide for cases of plurality of reserved seats in a constituency which however can no longer arise. In view of the Delimitation Commission Act passed in 1952 there cannot be any plurality of reserved seats as there cannot be more than one reserved seat in a double member constituency as there can be only one reserved seat, such a reserved seat being in a single member constituency or being only one of two seats in a double member constituency. Section 54 (3) provides that if the number of contesting candidates qualified to be chosen to fill the reserved seats exceeds the number of seats but the total number of contesting candidates is equal to the number of seats to be filled, the Returning Officer shall determine by lot to be drawn by him the candidates to be declared elected to the reserved seats and then declare the candidates so selected to be duly elected to fill the reserved seats and thereafter declare the remaining candidates to be duly elected to fill the remaining seats. Section 54 (4) provides for the contingency of not only the number of contesting candidates qualified to be chosen to fill the reserved seats exceeding the number of seats but the total number of contesting candidates also exceeding the total number of seats to be filled, then it is provided that the Returning Officer shall first declare those who being qualified to fill the reserved seats have secured the largest number of votes to be duly elected to fill the

reserved seats and then declare such of the remaining candidates as have secured the largest number of votes to be duly elected to fill the remaining seats.

Neither Section 54 (3) nor Section 54 (4) can have any application to elections in the present set up of constituencies where only one seat could be reserved. So the question of the contesting candidates exceeding the number of seats would not arise. These provisions can therefore have no application to the present case. The Returning Officer must have been influenced though not solely by the language of sub-clause 4, but by the illustration of that sub-clause which must have obviously been applied to this case and the 1st respondent was declared elected though there was only one reserved seat for which the 2nd respondent had already been declared elected. The Returning Officer erred in relying on Section 54 (4) or its illustration and applying it to the present case and he must have noted that Section 54 (4) is not applicable to a case where there is only one reserved seat in a double member constituency and where there are no plurality of reserved seats and where there are no constituencies where there can be more than two seats. The illustration to Section 54 (4) envisages a case where an election in a constituency was to fill the four seats of which two are reserved and where there are six candidates of whom three were qualified to fill the reserved seats. Section 54 (4) should not have been resorted to by the Returning Officer and applied to the instant case. He has failed to note that there is only reserved seat for which there were two contesting candidates and one of them, namely, the 2nd respondent has already been declared elected for that seat, the 1st respondent could not be declared elected to the remaining seat, and who has chosen, a reserved seat notwithstanding the remaining seat was a non-reserved seat.

It is urged that the illustration to Section 54 (4) does not conform to the principle of the sub-clause as it is contended that the "remaining seats" and "remaining candidates" in Section 54 (4) must refer to those who have not only been left over after those who have been declared elected but only such seats or candidates as pertain to the non-reserved seats and that the word 'remaining' must be read in the context and could only mean 'seat' or 'candidate' other than those 'reserved'. It is also argued that that could be the proper and reasonable meaning to be put on the words "remaining seats" or "remaining candidates" taking into account the scheme of the Act where it envisages two distinct categories of seats and two distinct classes of candidates, namely, the "reserved seat" and the "remaining seat" and the scheduled castes or scheduled tribes candidates who stood for the reserved seats and the other candidates who contested the other or remaining seats. There is no doubt force in this contention but the language of Section 54 (4) is plain and simple and it might not admit of the construction that is sought to be put upon it on behalf of the petitioner and it is also impossible to ignore the illustration. The draftsmen apparently conceived Section 54 (4) in the manner exemplified by the illustration. Illustrations to sections should not be easily rejected and it appears to me that on examining the language of Section 54 (3) and 54 (4) the Legislature at a time where there was possibility of the plurality of reserved seats in a constituency and where there could be a constituency with more than two seats might have been under the impression that such a declaration of the results of the election would not be a contravention of the principles governing the reservation of seats or the constitutional provisions relating to them and the rights of the citizen. But how far such a provision could be said to be in conformity with the general scheme of the Act, to the principles laid down in the Constitution and in the Delimitation Act as regards the extent of the representation that could be given to the scheduled castes and scheduled tribes is a matter which has to be separately dealt with.

It is further argued however that the illustration is repugnant to the principle of the section and even where there was the possibility of a plurality of reserved seats and more than a double member constituency, that what was intended by legislature in enacting Section 54 (4) was, that unless the person who was not only qualified to fill the remaining seat but who has also filed a nomination for such a seat could alone be declared elected to the remaining seat, but would not include any candidate even where, as in the present case the 1st respondent has restricted his candidature for the reserved seat. That there could be more than one nomination paper filed for election in the same constituency is evident from Section 33 clause 6. It has already been shown how the Act has sought to make a distinction between a reserved seat and the other or remaining seat by reference to Sections 32, 33, 34 and 36 etc., and the rules. There is therefore scope for a person belonging to the scheduled castes or scheduled tribes to file nomination not only for the reserved seat but also a nomination for the other seat, as more than one nomination paper for election in the same constituency could be filed. The nomination is to fill 'a' seat and that qualifications required is to fill 'that' seat under Section 32, that seat may be a "reserved" seat or may be the "other" seat in a double member constituency and the Act provides such a course. A person belonging to the scheduled castes or scheduled tribes being thus qualified to stand for the reserved seat, and being an elector qualified to stand for the other seat as well, may also file a nomination paper contesting the other seat. When the law enables an elector belonging to the scheduled castes or scheduled tribes for getting himself nominated to both seats in a double member constituency, the reference to the "contesting candidates" and the "remaining candidates" and the "remaining seats" in Sections 54 (3) and 54 (4) could only refer to those who have filed nominations for these seats which are contested (*viz.*) that seat which is a seat other than the reserved seat, and if an elector like the 1st respondent has filed his nomination papers as a member of the scheduled tribes for the reserved seat he could not be considered to be a contesting candidate to the "remaining seat." Section 54 (3) and Section 54 (4) can only be applied to enable a member of the scheduled tribes who has filed a nomination paper for the reserved seat to get himself declared elected to the other seat not reserved, only if he has also filed his nomination for the other seat. In that view the illustration may be considered to be repugnant to the section.

It is however sufficient in this case to hold that Section 54 in its entirety, has become a superfluity after the Delimitation Commission Act of 1952 and the section does not thereafter serve any purpose. The principle enunciated in 54 which might have been of relevant application prior to the Delimitation Act is already covered by the general section 53. It is urged on behalf of the respondent that the arguments for the petitioner proceeded on the assumption that the nomination of the 1st respondent is for the reserved seat. It is not an assumption but it is a fact testified by Ex. P. (a), P1 (b) and P 1 (c) and even otherwise if a person belonging to the scheduled castes or scheduled tribes files a nomination paper in Form 2A which requires a further declaration to be made by scheduled castes or scheduled tribes such a nomination must be deemed to relate to the reserved seat and such a nomination in a double member constituency could only be a nomination for the reserved seat in the double member constituency and on the other hand the assumption cannot be the other way that the nomination is for both the seats. A nomination paper could be filed for 'a' seat and not to more than one seat and the contention that every nomination filed by a member in a double member constituency is for a non-reserved seat cannot be supported. Counsel further contends that a scheduled castes or scheduled tribes candidate can confine his nomination to the non-reserved seat by not making the required declaration but cannot confine his nomination to the reserved seat by making such a declaration. I am unable to follow this argument. It might be that the filing of

a nomination paper by a member belonging to the scheduled castes or scheduled tribes without the declaration may be considered to be that he is not standing for the reserved seat but for the other seat he being an elector. It would have been open to him to have filed a nomination paper for the other seat which he has not chosen to do and as such the 1st respondent could not in my view be considered a contesting candidate for the other seat. No such question arises as the 1st respondent has defined his position by contesting for the reserved seat only and he could not in the circumstances be considered to be a contesting candidate for the other seat. Even on the language of Section 54 (4) he cannot be declared to be duly elected to a seat which he did not contest. Section 55 is referred to in support of the respondent's case but that is an enabling provision enacted for removal of any doubt as to whether a member of the scheduled castes or scheduled tribes could hold a seat not reserved for such castes or tribes if he is otherwise qualified. It enables a member of a scheduled tribe also as any other elector to contest not only a reserved seat but a seat which is not reserved in any constituency. In declaring the 1st respondent the Returning Officer has acted contrary to the principles applicable and laid down in the Act for making such a declaration as he has declared the 1st respondent elected to the remaining seat in the double member constituency, which seat he did not contest and to which he was not nominated, and the application of 54 (4) in the present case cannot be upheld as proper or legal. The election of the 1st respondent has therefore been materially affected by the non-compliance of the provisions of the Representation of the Peoples' Act and the rules framed thereunder. Issues 1 to 3 are found in favour of the petitioner.

*Issues 4 and 5.*—If however Section 54 (4) is found to be applicable notwithstanding the passing of the Delimitation Commission Act restricting the reserved seat to only one in a single member constituency or in a double member constituency and there being no longer any plurality of reserved seats or more than two member constituencies, it is contended that Section 54 (4) is *ultra vires*, illegal and void as being opposed to the provisions of the Constitution, in particular Article 330 and Articles 14 and 15. Article 330 clause 2 provides that the number of seats for any scheduled caste or tribe shall depend upon the proportion of the population of such castes or tribes to the total population of the State and the Delimitation Act of 1952 and the delimitation Commission has determined the number of seats for each State that could be reserved for scheduled castes or scheduled tribes and it would not therefore be competent for any authority to directly or indirectly vary the number of seats by securing to them more reserved seats than what are determined by the Delimitation Commission. If Section 54 (4) is considered to be applicable to the present case, as must have been considered to be so applicable by the Returning Officer, then the result is, that in the Parvathipuram double member constituency where only one seat is reserved for scheduled castes or scheduled tribes, the 1st respondent who stood as a scheduled tribes candidate for the reserved seat has been declared elected to the seat which has not been reserved, and in consequence both seats in the double member constituency have come to be held by the members of the scheduled tribes, who contested the reserved seat. The declaration of the 1st respondent as being elected to the other seat in pursuance of Section 54 (4) has the inevitable effect of increasing the number of seats already fixed by the Delimitation Commission for scheduled tribes and reducing the other seats or remaining seats by one, which is contrary to the provisions of the Constitution where the ratio of the reserved seats, as near as may be, should be in proportion to the population of the scheduled tribes to the general population of the State. In that view therefore the Section 54 (4) is contrary to the principles enunciated in Article 330 and contrary also to Section 8 of the Delimitation Commission Act. The transgression in this case of the provisions of the Constitution, namely,

Article 330 is not explicit or direct as the legislature as such has not allotted both the seats in the double member constituency to the scheduled tribes, but the declaration of the 1st respondent as being elected to the other seat by the Returning Officer relying on Section 54 (4) has such an effect. It is not open to the legislature to contravene the provisions of the Constitution and though Section 54 does not directly purport to do it the effect of Section 54 results in such transgression. The judgment of Justice Mukherjee in *A.I.R. 1953 SUPREME COURT PAGE 375 AT PAGE 379*, lays down the principles and the manner of approach in the examination of legislative enactments as to how and when such enactments transgress the limitations of its constitutional powers. It is the effect of the legislation that has to be looked into, though the legislation may not directly provide for any transgression but if the Legislation has the effect of contravening the constitutional provisions such legislation cannot be upheld. Therefore if Section 54 (4) is to be applied in the present case as it is understood in the light of its illustration, it has necessarily the effect of circumventing the principle of reservation as contemplated under Article 330 and implemented and determined by the Delimitation Act.

It is urged on behalf of the respondent that the distinction between a reserved seat and the general seat could not be in the minds of the electorate, as the electorate is common and the elections for both reserved and the other seat is also common and there is no prohibition for an elector to exercise his franchise in a particular manner, namely, that he should give only one of his votes to the candidate who stands for the reserved seat and the other vote to the candidate who contests the other seat as it is open to him to cast both of his votes in favour of a candidate whether he contests for the reserved seat or for the other seat. It is true there is no such distinction so far as the exercise of the franchise by an elector is concerned, but that circumstance cannot wipe away the distinction which the Constitution and the Representation of the Peoples' Act recognize as regards the seats for which elections may be held in a constituency. The electorate may be common in a particular constituency, but the seats for which the election are to be held are however distinct so long as the legislature provides separately for the scheduled castes and tribes a reserved seat in a double member constituency, and that distinction cannot cease to exist by the freedom that is given to the elector to vote in any manner he pleases. The general principles of the freedom of vote and the exercise of franchise taken from the system of elections prevailing in all democracies, have been applied to our elections but, in our country the system of elections are slightly different in view of the social, educational and economic conditions of its population. In view of the general backwardness of the scheduled castes or scheduled tribes it was considered necessary to make suitable safeguards for their due representation in the legislatures, and to effectuate that object the reservation of seats for the scheduled castes or scheduled tribes had to be resorted, and when once certain seats out of the total number are reserved there necessarily arises a difference and distinction between a seat so reserved and a seat not so reserved for such classes. That distinction cannot therefore be considered to be of no effect merely by reason of the freedom given to the elector to exercise the franchise in any manner he pleases. Freedom to exercise his franchise in any manner should have to be considered in relation to the system of elections introduced in our country under the relevant enactments. The freedom to exercise one's franchise in a common electorate where there is no system of reservation of seats and distinction arising thereby where the mind of the electorate is only confined to the question as to which of the contesting candidates he should vote his choice usually depending on the respective political parties of the candidates. Here however the mind of the elector cannot be taken to be completely obscure to the fact, that of the contesting candidates one has to be elected to the reserved seat and other to the remaining seat. Apart from the nomination papers filed by the 1st respondent, the subsequent stages

of the election, the propaganda carried by the 1st respondent and the issue of handbills and the posters Ex. P. 15 and P. 16 further confirm that the election proceeded on distinct lines, the 1st respondent canvassing the support of the electorate, that he might be returned to the reserved seat. On this point there is also the evidence that the 1st respondent wanted to be returned to the reserved seat which there is no reason to disregard, as it is consistent with the conduct of the 1st respondent in the election.

It is further contended that any legislation which has the effect of reducing the number of non-reserved seats open for being contested by persons not belonging to the scheduled castes or scheduled tribes would have the effect of infringing Article 14 of the Constitution. Article 14 of the Constitution provides that the State shall not deny any person equality before the law or the equal protection of the laws within the territory of India. The expression 'State' includes the Government and the Parliament in India. As to how far the production secured by Article 14 against discriminatory legislation permits class legislation has been the subject of judicial consideration from eminent Judges. There can be reasonable classification for the purposes of legislation and that classification must be found on a reasonable basis and must have a rational relation to the object that is sought to be secured by the legislation in question. While Article 14 secures to a citizen equality before the law and equal protection of laws, Article 15 enjoins on the State that there could be no discrimination against citizens on grounds of religion, race, class, sect or place of birth or any of them. But clause 4 of Article 15 empowers the State to make special provision for socially backward classes of citizens or for the scheduled castes and for the scheduled tribes. The special protection that is granted to the scheduled castes and scheduled tribes has the sanction of the Constitution and whether the classification satisfies the tests laid by the judicial decisions does not however arise for examination in this case. The reservation of seats for the scheduled castes and scheduled tribes might be the subject of State legislation deriving its authority from Article 15 clause 4. But in so far as regards elections the classification of scheduled castes and scheduled tribes and protection for them have been constitutionally recognized, inasmuch as Article 330 provides for reservation of seats and also defines the principles on which such reservation could be founded. Therefore it is not open to the petitioner, nor is it so contended, that the reservation of seats for the scheduled tribes infringes Article 14 of the Constitution, but what is objected to is, that under the colour of securing to the scheduled castes or scheduled tribes representation in the legislatures in proportion to the weightage of their population the rights and interests of the sections of the community who do not belong to the scheduled castes and scheduled tribes have been interfered with, and there is thus hostile discrimination made against the petitioner who does not belong to the scheduled castes or scheduled tribes.

The equality before the law of every citizen in the matter of election is initially recognized by granting adult suffrage having a common electorate with no other special qualification for any section of the population. But this equality before the law is sought to be varied when it reaches the stage of selecting representatives to the legislatures when in view of the special and backward conditions of certain communities, it was found necessary to make a distinction between certain classes of communities and the other classes. The safeguards that are secured for the scheduled castes or scheduled tribes in view of their backwardness has been, as has been shown clearly referred to, defined, so much so, no further legislation in pursuance of Article 15 (4) would become necessary or possible and if any such legislation is promulgated it shall not however be contrary to the constitutional safeguards embodied in Article 330, Sufficient powers have been given to the Parliament and Legislatures to deal with elections under Articles 327, 328 and 330 and any powers conferred on the

State under Article 15 clause 4 must be considered to have been exhausted by the constitutional provision made under Article 330 and the enactments passed under Articles 327 and 328. Any legislation therefore which has the effect of extending the protection granted by enlarging the number of reserved seats from the seats available for other communities would therefore work to their disadvantage. If the effect of such a legislation is to put the other communities, namely, non-scheduled castes or non-scheduled tribes at a disadvantage and secure to the scheduled castes and scheduled tribes more advantages, than what are prescribed in the Constitution and determined in the Delimitation Commission Act, such legislation would offend Article 14 of the Constitution.

The object of making special provision for the advancement of scheduled castes and scheduled tribes by securing them proper representation in the legislature is, as a result of the awareness of the existence of certain social conditions in the country which cannot be ignored and to promote a healthy growth of democracy and democratic institutions. The grant of adult suffrage to every citizen is to establish that every man is equal in the voting book, and there begins the real democracy. The grant of voting rights to the backward classes like scheduled castes or scheduled tribes invest them with a power which is sought for by a person running for election, and it has to be impressed upon the candidate that he must seek support from every strata of society while the granting of voting rights to the backward classes also invest them with an opportunity to protect their interests by suitable political action. But for a country, situated as ours, where certain communities are really backward the protection in the shape of reservation of seats is amply justified, but the protection so granted should not extend beyond reasonable limits so as to affect the interests of other communities who are also entitled to rights as every other citizen. Justice Bose in the course of his judgment in *A.I.R. 1956 SUPREME COURT PAGE 479* while dealing with Article 14 observes that, "Article 14 sets out an attitude of mind, a way of life, rather than a precise rule of law. It embodies a general awareness in the consciousness of the people at large, of something that exists and which is very real but which cannot be pinned down to any precise analysis of fact." . . . "It is not the law that alters but the changing conditions of the times and Article 14 narrows down to a question of fact which must be determined by the highest judges in the land as each case arises." Always there is in this case a clash of conflicting claims and it is the course of judicial process to arrive at an accommodation between them. It must be remembered that in the process of implementing the provisions of the Constitution for making special provisions for the scheduled castes or scheduled tribes the rights of the non-scheduled castes or tribes could not be encroached upon. Such an encroachment would offend the equality before the law guaranteed under the Constitution and also other provisions in the Constitution which had limited the extent to which the safeguards at any rate in the matter of elections could extend. In the present case the petitioner who has contested the non-reserved seat not being a member of the scheduled tribes is the one that requires protection as his rights have been interfered with by a declaration that the 1st respondent who has contested a reserved seat has been duly elected to the other seat which is not reserved, and which alone was open for contest by the petitioner and the 3rd respondent. The facts as regards the present election have to be examined to see how far and against whom hostile discrimination has been shown. The safeguards having become exhausted by the provision of the number of seats, addition of one more reserved seat in the constituency of Parvathipuram which is the effect of the declaration of the 1st respondent as being elected as a result of application of Section 54 (4) would be irrational and arbitrary. Section 54 (4) therefore offends Article 14 inasmuch as the fundamental right of equality before law is violated, as the scheduled tribes are placed in such a position as to infringe the constitutional rights of the non-scheduled tribes and is therefore *ultra vires* and void.

The equality before law in elections, is expressed in granting adult suffrage to every citizen and is also evident from having a joint electorate, all the electors have the right to vote for the reserved seat and for the other seat not reserved for the scheduled castes or tribes. So far as nominations and the elected seats are concerned compartmentalism is introduced. Nominations can be filed for more than one seat in the same constituency under Section 33 (6). The separation of reserved seat and the other or remaining seat in the declaration of election and in the filling up of vacancies, Section 54 (2), (5) Section 149 and the rest, conclusively establish that except in the exercise of the franchise and the right of every adult to get into the electoral roll, elections under the present law must be considered to be compartmental. This compartmental elections is not however unconstitutional as the Constitution envisages such compartmentalism. Precedent is lacking as this system of election has been introduced to suit the peculiar needs of the situation where existing social conditions warrant such a course.

That legislation which could keep separate and treat sections of society in regard to their citizenship rights separately but yet avoid infringement of equality before law has been tested in the case of the segregation of negroes in the United States. The "separate but equal" doctrine as to the segregation of negroes was the rule laid down in *PLASSEY Vs. FERGUSON* 163 U.S. 537 where the races could be segregated provided the facilities afforded one were equal to the facilities afforded the other. The "separate but equal" doctrine was itself challenged, the argument being though separate facilities were equal, one to the other, segregation was *per se* unconstitutional and it was so held by Chief Justice Warren in *BROWN Vs. BOARD OF EDUCATION* 347 U.S. 483.

In our system of elections there is no such separation based on any segregation. There is a distinction made but the distinction is a well defined distinction which does not admit of any interference, and such a distinction at certain stages of elections, in the allotment of seats in the Parliament and legislatures cannot infringe the right of the citizen of equality. Here it is not a case of "separate but equal" doctrine but may conveniently be termed as "distinct but equal" doctrine that is applied in our elections and the "distinct but equal" doctrine however is constitutional while the "separate but equal" has now been found to be unconstitutional; distinct in so far as the seats are concerned but equal in so far as the exercise of the franchise and also the rights of the returned candidates to the reserved seat and the other being same, as there is no distinction as regards the rights and privileges of Members of Parliament or legislatures.

In such a system of election the declaration of being elected would not depend upon who obtained the largest number of votes; the contention of the 1st respondent being that he having obtained the second largest number of votes, 660 votes more than the petitioner, he must be considered to have obtained the highest preference from the electorate, and so he is entitled to be declared elected in preference to the petitioner. That may be correct reasoning if an element of compartmentalism and the distinction in the matter of seats have not been introduced. The test to be applied is not who has obtained the larger number of votes but which of the contesting candidates for the other seat has obtained the largest number of votes for the other seat and not for the reserved seat. Applying that test the petitioner has to succeed.

Respondent contends that it is not open to the petitioner to raise the question of the *vires* of any provision of the Representation of the Peoples' Act before this Tribunal. Support for this argument is sought from the observations in A.I.R. 1953 Madras 105 and *V. M. Syed Mahomood vs. State of Madras* and in 1955 S.C. of 672 the *Bengal Immunity Co. vs. State of Bihar* which state the general principle that it is not open to contend before a Tribunal constituted under an enactment that the Act itself is *ultra vires* as the Tribunal itself owes

its very existence to the enactments. In this case however the contention is not that the entire Representation of the Peoples' Act is *ultra vires* but that a particular provision (*viz.*) Section 54 (1) contravenes the provision of the Constitution and interferes with the fundamental rights guaranteed under the Constitution. Any law or a particular provision in any enactment, if it is *ultra vires* and inconsistent with the provisions of the Constitution is no law. It may be in an Act of Parliament but it cannot have the force of law. No court or Tribunal could be asked to enforce such a law. Relying on *Rabyinga Norton vs. Shakey* (1886) 1118 U.S. 425, Willy in his Constitutional Law at page 90 observes: "The courts generally say that the effect of an unconstitutional statute is nothing. It is as though it had never been passed." The Tribunal cannot take cognizance of an unconstitutional provision notwithstanding that such a provision might find a place in a statute which is otherwise valid and constitutional. It is only when the entire Act is impugned as *ultra vires* that a Tribunal constituted under the Act would be incompetent to go into that question. Issues 4 and 5 are found in favour of the petitioner.

*Issue 6.*—This issue arises out of the allegation by the petitioner that the 1st respondent declared himself to be a member of scheduled tribe of Konda Doras in his nomination paper whereas in fact he was and is not a member of any scheduled tribe and was a Kshatriya and that if he was not a member of the scheduled tribe he could not have deemed to have been duly nominated because his deposit of Rs. 250 does not comply with Section 34 of the Act and that in any event result of the election has been materially affected by false statement in violation of Section 33 of the Act. The 1st respondent in order to entitle himself to contest a reserved seat must declare himself as belonging to the scheduled tribe, in which event the deposit in his case need not be the sum of Rs. 500, but only Rs. 250. He has filed a declaration in his nomination paper that he belongs to the scheduled tribe of Muka Doras and not Konda Doras as alleged in his petition and also paid a deposit of Rs. 250. The declaration in Form 2A is in the following terms:—

"I hereby declare that I am a member of the Muka Dora which is a scheduled tribe in the State of Andhra Pradesh in relation to the Parvathipuram Parliament (area) in that State". He has therefore declared that he was a member of the scheduled tribe of Muka Doras on the date of the nomination, namely, 28th January, 1957. But if it is established that on the date of the nomination he has ceased to be a member of the tribe, then notwithstanding that himself or his ancestors might have belonged to the tribe of Muka Doras the declaration made by him must be considered to be false and the legal consequences on such declaration would naturally follow. The petitioner further contends that he was a Kshatriya. It is for the petitioner to establish that he was not a member of the scheduled tribe when the 1st respondent nominated himself, and even though the petitioner fails to prove that he was a Kshatriya it would be enough if it is established that he no longer belonged to the tribe. The petitioner has attempted to establish both these contentions and how far he has succeeded will be dealt with while considering the evidence.

But before going to the evidence it may be necessary to have some knowledge of what a scheduled caste or a scheduled tribe is, their origin and background, their manners and customs, whether there could be any evolution in the respective castes and whether by such evolution could a member belonging to such a scheduled caste change over to a different or superior caste, and whether a member belonging to a scheduled tribe could give up his tribe and whether the scheduled tribes could convert themselves to castes and other relevant questions arising therefrom. In the present case however one may not require an elaborate examination of the origin of caste in Hindu society and the conversion of a person belonging to one caste to another caste within the fold of

Hindu society but one has to concentrate on the question as to whether a member belonging to a scheduled tribe could cease to belong to that tribe. In Webster's Dictionary 'castes' have been understood as "Hereditary classes of Hinduism", and 'tribe' is defined as a "Nation of savages and uncivilized people". In the Concise Oxford Dictionary, meaning of 'caste' is given as "Indian hereditary class with members socially equal, united in religion and usually following same trade having no social intercourse with persons of other castes", and meaning of 'tribe' is given as a "grouping of barbarous clans under recognized chief". The four-fold division of Hindu society is considered to have had its origin in the Rigveda and the reference to caste in Bhagvad Gita as "Chaturvarna" and being the creation of Lord Krishna, namely, Brahmans, Kshatriyas, Vaishyas and Shudras may be considered to be a general four-fold classification. But the Varnashrama Dharma in its pristine purity has ceased to exist in India and Hindu society is now divided into several castes and sub-castes and each caste and sub-caste is trying to bring its own within one or other of the four-fold classification. But a distinction is usually made between the three higher Varnas, namely, Brahmans, Kshatriyas, Vaishyas from the Shudras as ordinarily the members of the three Varnas were as a ground of differentiation wearing sacred thread and performing the Samskaras with Mantras from Vedic hymns and follow generally certain other customs and ways of life to show a kind of superiority over the fourth category of Shudras. There has also been a growing desire on the part of the lower to reach the higher and the ambition on the part of lower castes is to have a social climbing to a higher structure of society. The effect of conversion on the person converted and the place in the caste where he originally belonged he occupied, has been considered in certain decisions. The question arose for consideration in 1954 *Supreme Court Reports Page 817 Chaturbhuiadoss Vithaldas Jasani vs. Moreshwar* as to whether a member of Mahar caste continued to be a member of that sub-caste having followed the tenets of Mahamanabhava Panth. In that case the nomination of the scheduled caste was rejected on the ground that he did not belong to the scheduled caste of Mahars. He joined the Mahamanabhava Panth the founder of which sect repudiated the caste system as also multiplicity of castes and insisting on the monothestic principles. The founder of the sect also taught his disciples to eat with none but the initiated and to break off all formal ties of caste and religion. The sect had become a caste by 1911, but those who have adopted the faith observed the caste rituals of their Mahar caste and carried on social contacts with their caste people and married among themselves. The social and political consequences of such conversion was considered and Justice Bose at page 87 states that, "The consequences must be decided in a common sense, practical way rather than on theoretical and theoretical grounds." The principle of the decision of Privy Council in *Abraham vs. Abraham Moores 9 Indian Appeals 199* that, "the convert may renounce the old law by which he was bound, as he renounces his old religion or if he thinks fit he may abide by the old law notwithstanding he has renounced his old religion, was followed". It was observed that in so far as the religious side of such conversion was concerned, there might be bigoted fanaticism bitterly hostile towards the old order at one extreme and at the other the easy going laxness and tolerance which may cause the conversion only nominal, and there can be no clear and dividing line. but looked at from the secular point of view three factors are mentioned to be considered, namely: (1) the reactions of the old body, (2) the intentions of the individual himself and the rules of the new order and (3) if the individual himself desires and intends to retain his old social and political ties the conversion can be only nominal for all practical purposes but when one considers the legal and political rights of the old body the views of the new faith hardly matter. And if the convert has shown by his conduct and dealings, that is, that he no longer regards himself as a member of the old body and there is no reconversion and readmittance to the old faith,

it would be wrong to hold that he can nevertheless claim temporal and political privileges which are subject to the old order. These are tests which should be applied in the matter of a conversion of a person belonging to one caste to another caste.

The present case does not raise the question of conversion from one caste to another caste but it is an alleged severance from the tribe and the person is deemed to have become a member of one of the four castes of Hindu society, (viz.) the Kshatriya caste. On the subject of "Ethnology and caste", the Imperial Gazetteer of India, New Edition, shows how the conversion of aboriginal tribes into one or more of the distinguished castes has been effected and is possible. It is observed, "All over India at the present moment we can trace the gradual and insensible transformation of tribes into castes. But leading men of aboriginal tribes have somehow got on in the world, managed to enrol themselves into one of the more distinguished castes. They usually set up as Rajputs, the first step being to start with a Brahmin Priest who invents for them a mythical ancestor. In the earlier stage of their advancement they generally find great difficulty in getting their daughters married and will not take husbands from the real tribes and real Rajputs will not roundend to align with them. But after a generation or two their persistency obtains its reward and they intermarry..... Thus a real change of blood may take place while in any case the tribal name is completely lost..... They have even been absorbed in the fullest sense of the word and are locally accepted as high class Hindus..... A number of aborigines that you may even call them .....embrace the tenets of Hindu religious sect losing thereby their tribal names and becoming Vaishnavites, Lingayats, Ramayats and the like. Anyhow the identity of the converts as aborigines is usually lost and this may also be regarded as a case of true absorption." The employment of a brahmin priest is one of the inevitable requirements of such a transformation. It is now evident the process of this conversion of tribes or individual members into castes has been going on in several parts of India. The reasons for which such a change is made being a desire on the part of a member of a tribe which is generally uncivilized and even barbarous, to get out of it once he becomes economically prosperous and a natural desire on his part to seek to mix himself with the section of the society which is considered to be more civilized and which occupies a distinctly superior position in society.

It is not correct that the 1st respondent declared himself in his nomination to be a Konda Dora. He declared himself to be a Muka Dora and the Muka-doras are referred to in the District Registers of Visakhapatnam as a separate caste and the Zamindar of Pachipenta is one of them. They speak Telugu and observe at wedding ceremonies which are a mixture of hill rites and low country practices, seclude girls when they attain puberty within a circle of arrows and have other customs like having a feast in honour of their ancestors, their profession being pack bullock trading. It is mentioned at page 66 that such backward peoples of the agency often protect from outside influence by their isolation whose religious beliefs are yet but little imbued with Hinduism. The evidence cited on behalf of both sides do not vary as regards the respective castes, customs and living conditions of the Muka Doras and the Kshatriyas but the question is whether the 1st respondent is still a member of the Muka Dora tribe, whether he continues to follow the customs and mode of living of the Muka Dora community or whether he has given them up and is following the caste customs of Kshatriya Zamindars of the area. The evidence has therefore to be approached and examined for ascertaining the true position.

In so examining the evidence the tests laid down for conversion in the judgement of justice Bose in 1954 *Supreme Court Reports* may well be applied to the present case, though it is not a case of conversion from one

caste to another caste but conversion from a tribe into a caste and though it may not even be necessary to establish for the purposes of this case that there has been a conversion from Muka Dora to the Kshatriya caste as it is sufficient if it is shown that the 1st respondent has ceased to belong to the Muka Dora tribe.

The evidence on this aspect of the case may now be reviewed. EX.P. 4 is the National Register of Sariki where he is mentioned as belonging to the Kshatriya caste. Reliance is placed on EX.P. 7, P.8 and P.9 which are Voters' Lists where the 1st respondent is described as a Kshatriya (vide EX.P. 7(a)). The entries in the National Register at any rate are made on the information furnished by the persons whose names are entered and the description of the 1st respondent's caste as a Kshatriya must have been on a statement made by him. Ex P.10 and P.11 are loan application and security bond wherein he describes himself as a Kshatriya. Ex. P.12 and P.13 are documents to which he was a party of the year 1944 where he describes himself as a Kshatriya. Ex. P.19 is an agreement entered into with the Government Agriculture Department executed as late as 1956 where he describes himself as a Kshatriya. Ex. P.21 is the mining lease obtained by him in 1953 where he describes himself as a Kshatriya. Ex. P.23 is certified copy of the 1st respondent's deposition in a case of 1952 before the sub Divisional Magistrate of Parvathipuram where his caste is mentioned as Kshatriya which could not have been the case if he had stated that he continued to be a Muka Dora and not a Kshatriya. Ex. P.24 is certified copy of mortgage bond dated 30th June, 1948 where again he describes himself as a Kshatriya. A number of documents have been filed on behalf of the 1st respondent where his ancestors are described as Muka Doras or Konda Doras but some of them are ancient documents, R. 3, R. 4, R. 5, R. 6, R. 7, R. 8 and R. 9 being of the years 1885, 1895, 1892, 1894, 1897, 1900 and 1912 respectively. Ex.R. 13, R. 14 and R. 15 are extracts from suits in O.S.No. 417 of 1892, O.S. No. 397 of 1936 and O.S. No. 497 of 1932 respectively where the 1st respondent's father and brothers are described as Muka Doras. Ex.R. 17, R. 18 and R. 19 again are possessory mortgage deeds of the years 1912, 1910 and 1911, and R. 16 of the year 1920 which describe his ancestors as Muka Doras. Ex.R. 20 is an extract from the Death Register stated to be the report of the death of the elder brother of the 1st respondent who died on 25th March, 1941 whose nationality and caste is mentioned as Muka Dora. Ex.R. 2 is Admission Register of the Elementary School of Thonam village, Sariki Taluk which is filed to show that the 1st respondent was admitted as pupil in the School in 1926 and in the column relating to caste it is mentioned as Muka Dora. The date of birth as it appears shows that it has been tampered with but on the whole it cannot be said that the entry as to admission is a fabrication. The guardian's name is mentioned as Gangana Dora elder brother of the pupil Suri Dora and house name 'Dippala' is mentioned. I am unable to accept the suggestion that the relevant entry in the Register is not genuine. The Register also came from proper custody. In 1926 when his elder brother admitted him in the Elementary School he must have given his caste description as Muka Dora.

Coming to the oral evidence P.W. 3 is non-gazetted Tahsildar of Jeypore, and Sariki village is within his jurisdiction. He proves the Registrar's endorsements in Ex. P. 12 and P. 13 and he says to his knowledge the 1st respondent was a Kshatriya and the Dippala family owns a Mokasa and the Mokasadors call themselves as Kshatriyas but he has not attended any religious ceremonies of either of the families but he has been treating the 1st respondent's family as a Kshatriya family. P.W. 8 is an important witness. He was Diwan of Salur and was Chairman of the Municipality and he is a Kshatriya. He says that the Zamindars of Pachipenta, Thonam and Mamidipalli are Kshatriyas and speaks of the marriage relationships between those families and that of the admittedly Kshatriya families of Chikati and Darakota

and other families. He also speaks of the manners and customs of the Kshatriyas. Muka Doras do not wear sacred thread, Upanaiyam is non-existent among Muka Doras. Pollution is observed during child birth and death, and marriage ceremonies are now reduced to one day; and all these are not observed among Muka Doras. Kshatriyas have brahmin priests who officiate during religious ceremonies but Muka Doras do not have priests but have their own Headmen who act as priests. He is an Oriya Kshatriya and speaks to the marriage relationship between Jalamoor and Pachipenta families. It may be stated that he might not have gone to Muka Doras' house but he has observed their customs and way of living. He says that he asked the 1st respondent as to why he was contesting the Parliamentary reserved seat and he replied that he is standing for the reserved seat because he succeeded in an earlier Election Petition No. 7 of 1955 taken out by one Parayya. This witness has no doubt supported the petitioner in his election and who originally belonged to the Justice Party and then joined the Congress; later resigned from the Congress and supported the petitioner. His evidence on the marital relationship of the several families is entitled to weight and in answer to questions from the Tribunal he also said that these tribes do not call themselves as 'Doras' but have tribal names as 'Ayya' or 'Anna' but Kshatriya families call themselves as 'Rajus' and some Volamma zamindars call themselves as 'Doras'. P.W. 10 was an abkari contractor who applied for an abkari contract along with the 1st respondent. He says he knew him as a Kshatriya and that was because he was related to Pachipenta and Mamidipalli families. It may be mentioned here that Pechipenta and Mamidipalli families call themselves as Kshatriyas and have not so far identified themselves with the Muka Doras and continue to maintain that they are Kshatriya families. P.W. 11 is a member of the family of the old Zamindar of Pachipenta. He speaks to the relationship of Thyadapusapati families consisting of Mamidipalli, Pachipenta and Thonam families and the admittedly Kshatriya families of Chikati, Tekali and Jayapatnam, etc. His evidence is useful in speaking of the intermarriages between the several families and admittedly Kshatriya families. He says in the course of his cross-examination that some of the agency zamindars were Konda Doras and Muka Doras but they call themselves as Kshatriyas because they are zamindars and members of these families call themselves Kshatriyas though they do not own any estate. The zamindar of Thonam is related to him and he says he is a Kshatriya being a member of the Pachipenta family. He says that to his knowledge they have described themselves as Kshatriyas and his ancestors having described themselves as Muka Doras. P.W. 15 again refers to the intermarriage between the several families some of whom were originally Muka Doras but later recognized as Kshatriyas with the real Kshatriya families. P.W. 16 is a brahmin purohit. He says that he is purohit for the 1st respondent's family. His age is 42 years and he speaks to the 1st respondent's family adopting Kshatriya customs and not of Muka Doras and observing pollution etc., that they wear sacred thread and perform 'homam' in marriages. He gave evidence in Election Petition No. 7 of 1955 to the same effect and he says that he has been performing ceremonies in the 1st respondent's house after he came of age when his father died, but after he gave evidence in Election Petition No. 7 of 1955 he was not asked to officiate for the ceremonies in 1st respondent's house. He also says that he has not officiated as purohit for any Muka Doras. I see no reason why the evidence of this witness should be disregarded. Nothing is suggested against him excepting that he is a poor brahmin purohit which is no ground for rejection, as his evidence is also supported by the other witnesses. P.W. 17 is a relation of the Zamindar of Salur who is a Kshatriya and was examined on commission. He says he knew 1st respondent and the sister of the 1st respondent was married to the wife's brother of this witness and the 1st respondent's second daughter was given in marriage to his other brother-in-law. His evidence establishes intermarriages between the 1st

respondent's family with the family with whom this witness had alliances. He also says that Muka Doras were doing road work and bringing firewood but has not gone to attend any function in any Muka Dora family. It is not likely any Kshatriya will be invited or ordinarily go and attend any social function of Muka Doras.

On behalf of the 1st respondent the witnesses examined were R.W. 1, R.W. 2, R.W. 3, R.W. 5 and R.W. 7 besides himself on the question as to whether he was a Muka Dora or not. R.W. 1 who is a Muka Dora stated that 1st respondent was a Muka Dora and witness's maternal uncle's daughter was given in marriage to 1st respondent's elder brother Gangana Dora. Then he speaks of the customs about which there is no dispute. He said in chief examination that he was wearing sacred thread and some members of his community were wearing sacred thread but in cross-examination he said none of his people were wearing sacred thread and when asked to point out the sacred thread he was found out and said that he did not wear sacred thread, and said wealthy people wore sacred thread in the community and poor people did not. He belonged to a family of three brothers who own 12 acres of land and he stated in his family they did not wear sacred thread. Though he stated he was a close relation of 1st respondent, he did not attend any marriage or dine in his house and states that 1st respondent ordinarily did not move with this witness. It is only on marriage occasions they come. Those of his community people who can afford wear nose-rings as witness was wearing, but the poorer section do not have their noses bored, and the 1st respondent did not have his nose bored because he is a Mokasadar. Muka Doras are mostly in agency areas. P.W. 2 is also a Muka Dora and he said in chief examination that his daughter is the wife of 1st respondent's brother but in cross-examination he said it was not his daughter but his brother's daughter. He had come to support the 1st respondent. In cross-examination he stated that for the last 40 or 50 years Mokasadars of whom the 1st respondent is one, do not mix with Muka Doras nor dine with them nor do they intermarry and that he did not visit the 1st respondent's house after the death of Gungana Dora which is shown to be in 1941. He also was wearing sacred thread which he exhibited prominently and he said it was only two weeks old. These two witnesses have not impressed me and the comment about their evidence that they have been procured for the occasion does not seem to be far-fetched, but they have made certain admissions in cross-examination which would show that the 1st respondent and generally Mokasadars whose ancestors were Muka Doras have given up mixing with the Muka Dora community and have also not been following the tribal customs and manners. R.W. 3 is a Konda Dora. He says that Mokasadars of Thonam, Kurukuti, Mamidipalli, Dandigama, Pachipenta and Sariki are Muka Doras and there is no difference in the manners and customs between Konda Doras and Muka Doras. He is a School Manager and speaks of the admission of the 1st respondent and said that 1st respondent's family was adopting the same old customs but the suggestion that he is a servant of 1st respondent he denied. R.W. 5 is a Kshatriya and he says he came in contact with the 1st respondent as an Ayurvedic Physician but did not attend marriage functions of 1st respondent's family and he says there is no relationship between Muka Doras and Kshatriyas. His cross-examination shows his knowledge about the relationship by intermarriages is not of much value. He speaks to the 1st respondent's wearing sacred thread and that his brother also wears sacred thread. They began to wear sacred thread from the time of their marriages and that his father also wore sacred thread but he does not know about the marriage customs and says he did not go to 1st respondent's house nor dine with him at any time. R.W. 7 is a Mokasadar of Kurukuti and a Muka Dora and says that 1st respondent was his mother's brother and not related to Kshatriyas. One Korra Kotayya officiates at ceremonies and he speaks of the customs of the Muka Dora

community, but he does not wear sacred thread nor his family but he says that Suri Dora wears sacred thread from the time of their ancestors and that 1st respondent's family follow Muka Doras' customs. Korra Kotayya's family also wear sacred thread. The marriage of the 1st respondent with the sister of Mokasadar of Mamidipalli is spoken to by this witness. He attended that marriage but not any other marriage. It was suggested that he was not his nephew. Though he said that he did attend marriage of 1st respondent with the sister of Mokasadar of Mamidipalli, but later said he only heard about it and his evidence in the circumstances is not entitled to much weight. The evidence of the 1st respondent is that he is Mokasadar of Sariki consisting of 12 villages, that he is a Muka Dora by caste and a hill tribe and that Mokasadors of Nandigama, Mamidipalli, Kurukuti are within the zamindari of Pachipenta and they are Muka Doras, and the Zamindar of Pachipenta is related to caste elder Korra Ontaradora. It may be mentioned here that Korra Ontaradora is also described as Kshatriya in the National Register and in the voters' list. He denies that he is adopting any of the manners and customs of Kshatriyas but sticking on to old tribal customs. He admits that Salur, Chikati, Jeypore are Kshatriya families but says there is no relationship between them and other zamindars which however cannot be the case. There was a separation between himself and his first wife. He married a second wife and thereafter a third wife which was just before the elections. He says that there is no caste distinction between Muka Doras and Konda Doras and the distinction is in their economic status, that while Konda Doras and Muka Doras interdine they do not intermarry and the Mokasadors marry among themselves. As regards his description as a Kshatriya in the documents he states that the Karnam represented that since they are Mokasadors they can call themselves as Kshatriyas but this explanation is hardly convincing. He admits that Kshatriyas are considered by him to be superior to Muka Doras. He pleads ignorance that the Zamindar of Pachipenta and Zamindar of Andra were contestants in the 1955 Assembly elections having described themselves as Kshatriyas and did not stand for the reserved seat but for the non-reserved seat. He now wants to say that he wears sacred thread from the time of his great-grandfather while in his evidence in Election Petition No. 7 of 1955 he said he is wearing the sacred thread only for the last 15 or 20 years. His evidence shows that apart from the Mokasa he got forests, private lands and his shops all of which yield a good income. He says that ever since his age of discretion the zamindars though they are Muka Doras call themselves Kshatriyas and generally give their daughters in marriage to families of Mokasadors. He admits relationship with the zamindars of Pachipenta and Mamidipalli. In his deposition in Election Petition No. 7 of 1955 the pleaded ignorance of his description as Kshatriya in the National Register.

The resume of the evidence discloses that families who were originally Muka Doras but being Mokasadors like Pachipenta and Mamidipalli, have begun to eliminate themselves from the hill tribes of Muka Doras, most of them even during the time of their ancestors, and have begun to adopt the manners and customs of the Mokasadors of the Kshatriya caste calling themselves as Rajus or Doras. That the 1st respondent has also chosen to take that course, has been shown by the evidence both documentary and oral. In so far as the 1st respondent is concerned, his family might have adopted the life of Kshatriya zamindars much later than the Pachipenta and Mamidipalli and other zamindars who also came from the Muka Doras clan, but the severance from the tribe and the renouncement of the tribal manners and customs in their daily life and social relations, marriages and other auspicious and inauspicious ceremonies has been shown to be definite and at any rate from about 15 or 20 years ago. The last of the documents in which description of the 1st respondent as member of a family of Muka Doras is of the year 1936 apart from the extract from the Death Register of 1941 and most of these

documents are ancient being more than 40 or 50 years old. The evidence of R.W. 1 and R.W. 2 in their cross-examination bring out how the 1st respondent's family ceased to have social contact with the members of Muka Dora tribe. The Muka Doras have been shown to be a hill tribe some of whom migrated to the plains doing manual labour, road work and by carrying firewood and some of them following ancestral avocation of pack bullock trading. Muka Doras are a sub-division of Konda Doras. R.W. 1 and R.W. 2 appear to be typical Muka Doras wearing the nose-ring, their physique and appearance showing the hard manual labour they have been accustomed to, and depict the class of people who could still be considered to belong to the Muka Dora tribe. 1st respondent has shown by his conduct expressed in the documents and by the marital relationships of his family with the highly placed Mokasaders who would not like to be called Muka Doras but consider themselves as Kshatriyas like Pachipenta and Mamidipally, that he has totally given up feeling himself to be a member of the Muka Dora tribe having adopted the manners and customs of Kshatriyas. His employment of the brahmin priest and his adoption of the manners and customs and also of the ceremonies which are usually performed in Kshatriya families is sufficient to show that he by his conduct thus expressed that he no longer belongs to Muka Dora tribe but a Kshatriya. Reactions of the old body of the Muka Doras can very well be seen from the evidence of R.W. 1 and R.W. 2 besides the intention of the individual himself which has been more than clarified by the trend of events which has been weaning him away from his original fold into the new order of Kshatriyas and his adoption of the new order. The evidence in this case therefore taken as a whole points to this conclusion that the 1st respondent and his family at any rate for about 20 years and even for a much longer period have cut themselves away from Muka Dora hill tribes and given up their ordinary avocations as well as the tribal customs and manners. It is not by the mere circumstances of the 1st respondent being a Mokasadar that he ceased to be a member of Muka Doras. A Muka Dora might be a Mokasadar but still cling to his tribal customs and manners, and the mere economic status to which he is raised by owning property would not ordinarily result in his not being considered to be a member of the tribe, but in the present case the 1st respondent and his ancestors, at any rate, the 1st respondent has for some long period of years expressed an unequivocal intention of drifting away from the clan from which himself and his family came and got into the new fold of the Kshatriyas, the new fold of Kshatriyas being the caste to which persons of his position and status, namely, Mokasaders belonged. Andhra zamindars and land-holders generally belong to Kshatriya caste in the Vizagapatam District though there are also other zamindars belonging to Velamma families. In the circumstances could it be said that 1st respondent was a member of the scheduled tribe of Muka Doras on the date of his nomination?

It is urged that the relevant period which must be taken into account as to when it should be shown that he is a Muka Dora, is the period covered by the Order of the President in 1950. In my view it is not the year 1950 when the President's order was promulgated but the date of the nomination on which a member declares himself as belonging to a scheduled tribe referred to in the President's order which is the relevant date and not at any time earlier. In the present case the transformation from the Muka Dora tribe to the Kshatriya caste has been shown to commence much earlier that is about 20 years ago, and this is a case where it could not be held that on the date of nomination the 1st respondent was a member of Muka Dora tribe. In that view his declaration that he is a member of the scheduled tribe must be considered to be not true and he has therefore falsely declared himself to be a member of a scheduled tribe of Muka Doras to satisfy the requirements of Section 33(2) whereas in fact he was not such a member. The purpose of such a declaration was to enable him to get himself nominated on payment of a concessional deposit of Rs. 250/- under Section 34 (1) (b) and also enable him to contest for the reserved seat which he has done. His nomination in the circumstances

should have been rejected as not satisfying the requirements of the Act and the declaration and subsequent nomination must be therefore to be considered to have materially affected the result of the election on account of the improper acceptance of nomination and by non-compliance of the Act and the rules framed thereunder. If he had stated, as is found in the electoral roll as not belonging to a scheduled tribe, he should have complied with the requirements of a deposit under Section 33 and could not have also nominated himself for contesting the reserved seat. The result of the election has therefore been materially affected.

Article 330 of the Constitution and the President's Order have been conceived in the interests of these backward tribes in the country most of whom have been living in primitive conditions, adopting archaic customs, and not mixing themselves and having social relations with the rest of the communities, and with a view to give them an opportunity to take part in the Government of the country by giving them not only electoral right but proper and due representation in the Parliament and legislatures, and thus enable them to have an effective voice in the legislatures so that their position socially, educationally and economically may be bettered and they may also progress and not be eclipsed by the already fairly advanced communities. Their interests, their grievances and backward conditions in which they are living can at best be represented by persons who continue to belong to the fold and not persons like the 1st respondent who by reason of their being Mokasadars have considered themselves to be more superior to the stock which they came from and chosen to identify themselves with the already superior and advanced communities of the Kshatriya zamindars. Persons of the type of the 1st respondent who have drifted away from their old clan and renounced the tribal customs and manners and chosen to adopt the prevailing practices of the higher caste of the Hindu community could not be entrusted with the task of representing the genuine grievances and the hopeless conditions under which still the tribal communities live. Allowing such persons to call themselves members of a scheduled tribe and take advantage of Article 330 of the Constitution and Constitutional Scheduled Tribes Order of 1950 would amount to a denial of the benefits that are sought to be conferred by the Constitution on the unfortunate communities like the hill tribes of Muka Doras. It is significant that while other Mokasadars like Pachipenta whose ancestors were Muka Doras having given up their tribal customs and manners and even adopted Kshatriya manners and customs and ways of life, have not chosen to take advantage of facilities offered to the members of their clan to which they ceased to belong, the 1st respondent has apparently with a view to secure a seat in the Parliament contested the seat reserved for the scheduled tribes and in the circumstances I am inclined to believe the evidence of R. W. 8 that the 1st respondent has chosen to stand as a candidate encouraged by the decision in Election Petition No. 7 of 1955. Article 330 of the Constitution and Constitutional Scheduled Tribes Order of 1950 could not be invoked to bring within its scope persons placed in the position of the 1st respondent or to be treated as members of the tribes, list of which is appended to this Order.

A distinction would however appear to be necessary in examining whether a person is a member of the scheduled caste or scheduled tribe on the date of nomination, for in the case of the former notwithstanding that a person may by reason of his superior economical position may afford or choose to live away from the members of his caste he may yet be considered to belong to the caste since caste has a religious or a theoretical basis. It may not therefore be considered that merely by reason of his ceasing to mix himself with the members of his caste, by living separately, and occupying high position in life, would necessarily lead to the conclusion that he is not a member of the caste. But in the case of tribes whether a person is a member of the tribe has to be judged

by his conduct, his mode of living and the attitude of the society in general and that of the members of the clan which he came from in particular, there being no ties like religion that could still bind him to the tribe to which he originally belonged. While much convincing evidence would be necessary in the case of an alleged conversion from one caste to another caste the renouncement of tribe would depend upon his conduct, his intentions and the way of life that the person chooses to adopt and not other extraneous considerations.

I find that the 1st respondent was not a member of scheduled tribes and, for all practical purposes, a Kshatriya on the date of his nomination and his nomination is not therefore valid. The declaration which the petitioner prays for is that the election of the returned candidate Dippala Suri Dora is void and to declare himself to have been duly elected to the House of the People from the Parvathipuram constituency for the general or non-reserved seat. Section 101 provides that where petitioner claims declaration that he himself or any other candidate has been duly elected he must show that in fact petitioner received the majority of valid votes and it is only after he satisfies the Tribunal that he received the majority of votes that he could get a declaration that he has been duly elected. In view of the finding that the 1st respondent contested the reserved seat and not the other seat in the double member constituency, it is for consideration as to who all contested the other seat and who has received the majority of the valid votes. The two candidates who contested the other seat, namely, the non-reserved seat are the petitioner and 3rd respondent and the petitioner having obtained 1,24,039 votes, the 3rd respondent only 18,968 votes, and the petitioner having obtained the majority of votes is entitled to be declared elected. But if it is on the ground of improper acceptance of nomination and that the result of the election has been materially affected by non-compliance with the provisions of the Constitution and the Act and the rules, 1st respondent's election could only be held void. But in the view I am taking that the 1st respondent did not contest the seat for which the petitioner contested, the only persons contesting the other seat being the petitioner and 3rd respondent, and the petitioner having received the majority of votes, the declaration prayed for has to be granted. The result is the election of 1st respondent is declared void and it is declared that the petitioner has been duly elected.

An argument is advanced that the petitioner is not entitled to the declaration as he is now holding an office of profit as Governor of Uttar Pradesh and under Article 102 of the Constitution he is disqualified for being chosen for being a member of the House of the People. The declaration which is granted now is, that he has been duly elected to the House of the People, which must refer to the date of declaration of the election (viz.) 19th March, 1957 when the petitioner was not Governor of Uttar Pradesh and was not therefore disqualified, and not the date of this order. The 1st respondent will pay the costs of the petition which in the circumstances of the case I fix at Rs. 250/-.

(Sd/-) W. S. KRISHNASWAMI NAYUDU,  
Election Tribunal, Hyderabad

[No. 82/83/57.]

By order,

A. KRISHNASWAMY AYYANGAR, Secy.

